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Europeanisation effects in the court jurisprudence

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Summary: Nowadays, the notion of Europeanisation, which has formerly been used as a description for multi-level governance, prevails also in the area of law. Legal Europeanisation is a process that appears in the interactions of legal systems of the Member States between one another, as well as between European law and the laws of the Member States. Its main area is the appearance of European legal elements in the legal practice of Member States. At some point, the court practice of Member States may affect European law, as well. Due to the occurrence of comparative law elements, interactions can be observed between courts in the EU. According to our basic premise, the interactions can be best observed through the practice of different courts. This article aims to prove this premise by establishing different guiding principles through further Hungarian court decisions in the field of civil law.

Keywords: Legal Europeanisation, interactions of jurisprudence, comparative law methods, interpretation, doctrine of legal interpretation, the impact of autonomous dogmas, principle of the obligation of interpretation, living European law, Hungarian case law

1 Introduction

The European Union and its Member States also have their own legal systems. Court of Justice of the European Union (hereinafter as: CJEU) has an exclusive right to interpret European law. In the Member States, the national courts of each Member State interpret the law. There are some mechanisms for cooperation in interpretation. To ensure the effective and uniform application of European Union legislation and to prevent divergent interpretations, the national courts may, and sometimes must, refer to the Court of Justice and ask it to clarify a point concerning the interpretation of EU law. However, there are also interactions between legal systems, especially in the field of legal interpretation. This article presents the process of interactions between different jurisprudences. I would like to present and analyze how works an interaction between the practice of national courts and the CJEU through further Hungarian court decisions in

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the field of civil law. This shows how can leak European law elements into the judicial practice of each Member State, even without formal procedures.

My first doctrine that legal Europeanisation is a process that appears in the interactions of legal systems of the Member States between one another, as well as between European law and the laws of the Member States. This article aims to contribute to the development of this process.

I use comparative legal elements in my research. I examine the interactions through the establishment of doctrines and basic premises. This article aims to prove this premise by establishing different guiding principles. Its main area is the appearance of European legal elements in the legal practice of Member States. At some point, the court practice of Member States may affect European law, as well. Due to the occurrence of comparative law elements, interactions can be observed between courts in the EU. This article gives examples and it considers some aspects of Hungarian civil law practice. In the essay, I make six theses that I wish to justify. The doctrinal perspective on law aims mainly to analyse, systematise tendencies and draw conclusions.

The principal purposes of the discussion are two-fold. First, based on the example of comparative law, the article seeks to illuminate inter-court relations in the European Union, in particular the relations between the one national court and the other national court. Secondly, based on legal interpretation, the article wants to introduce the non-formal interactions between courts in the European Union. I would like to proof by used premises how lives and works together the European law and the case law of the Member States in the European Union. The starting point in the artickle is the legal interpretation activity as the main element of application of law. Many excellent authors have examined the dogmatic basis and methodology of the legal interpretation. This article basically does not want to deal with it. After a brief outline of this topic, the study wants to aim to discover a new area (layer) of legal interpretation. I use the legal interpretation as an Europeanization tool capable of influencing the judiciary in order to justify the effects of legal systems on each other.

2 The essence of judicial legal interpretation

The application of law means law enforcement, and this is the other means of the realisation of law alongside the adherence to law. The pursuit of the practice of the application of law is a complex cognitive process.[1] Even if we break it down to either phases,[2] or actions[3], its central element will still be the interpretation of

1 See Kelsen, Hans. *Pure Theory of Law*. Translation from the Second German Edition by Max Knight. Berkeley: University of California Press, 1967, pp. 1–348.

2 Establishment of the state of facts, interpretation of the legal rule, delivering of the decision.

3 Affirmation of the authentic text of the applicable legal rule, establishment of the state of facts, interpretation of the legal rule, the legal classification of the established fact, the defi-

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the legal source. In other words, the essence of the norm may only be revealed with the aid of the interpretation of law.[4]

The establishment of fact during the application of law before the judicial forums of the European Union manifests with a heavier dominance than most of the national laws. The establishment of proof by the CJEU is fairly rare – due to the peculiar features of the proceedings – in the proceedings, whereas the comprehensive and authentic exhibition of the established fact is required from the parties.[5] As opposed to this, a central role is attributed to the interpretation practice of law. The practice of the legal interpretation shall form the duty to the court and tribunal in the European Union, with respect the interpretation practice of the CJEU.[6] Conveys a predominating relevance – via the preliminary ruling proceeding[7] – even over the professional activity of the national judiciaries as legal practitioners for the protection[8] of rights.[9] The distinguished relevance of the legal interpretation is substantiated by that in order to achieve the goals as described in the founding Treaties, one of the most indispensable instruments is to create a corpus of European Union legislation that shall be applied in the Member States with uniformity.[10]

Several methods of the interpretation of law are known,[11] out of which the two earliest recognized methods were the grammatical and the logical interpretation, if we are observing it backwards, with a historical view. The natural law[12] (ius naturale) concepts[13] – especially its school of secular natural law – added

nition of legal consequences. See: Bankowski, Zeno, MacCormick, Neil (eds). *The Judicial Application of Law.* Dordrecht; Boston: Kluwer Academic Publishers1992, pp 1–357.

4 Arnull, Anthony: '*The European Union and its Court of Justice*'. Oxford European Union Law Library, Oxford, 2006, pp. 607–622.

5 Gündisch, Jürgen, Wienhues, Sigrid. *Rechtsschutz in der Europäischen Union. Ein Leitfaden für die Praxis*. Stuttgart-Müchen-Hannover-Berlin-Weimar-Dresden Stuttgart: Richard Boorberg Verlag, 2003, p. 121.

6 Schermers, Henry G. Waelbroeck, Denis F. *Judicial Protection in the European Union.* The Hague: Kluwer Law International, 2001, pp. 133–151.

7 Nowak, Janek, Tomasz (ed). *EU Procedural Law.* Oxford: Oxford University Press, 2014, pp. 783–798.

8 Lenaerts, Koen. The Court of Justice of the European Union and the Protection of Fundamental Rights. *Polish Yearbook of International Law*, 2011, vol. 31, pp. 79–106.

9 Lenaerts, Koen. The European Court of First Instance: Ten years of interaction with the Court of Justice. In: O'Keeffe; David, Bavasso, Antonio (eds.). *Liber amicorum in honour of Lord Slynn of Hadley. Vol. 1: Judicial Review in European Union Law*. The Hague: Kluwer Law International, 2000, pp. 97–99.

10 On the relevance of the interpretive practice see: Stone Sweet, Alec. *The judicial construction of Europe*. Oxford: Oxford University Press, 2004, pp. 1–45.

11 See: MacCormick, D. Neil, Summers, Robert S. *Interpreting statutes: A Comparative Study*. New York: Routledge, 2016, pp. 511–544.

12 See: Hall, Stephen. The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism. *European Journal of International Law*, 2001, vol. 12, no. 2, pp. 269–307, Available: https://doi.org/10.1093/ejil/12.2.269

13 There are three schools of natural law theory: divine natural law, secular natural law, and

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the taxonomical interpretation to the existing interpretation methods, and later on it was Carl Friedrich von Savigny to become the first preeminent „system architect", who founded the so-called theory of the four interpretation canons for modern jurisprudence. Canon meant the steps of the interpretation process building consistently on one another, as per which the application of the simpler grammatical and logical interpretations had to be followed by that of the systematic and historical interpretations during every legal interpretation of a norm's text.[14]

A massive volume of professional legal literature elaborates on the methods of legal interpretation in general, and within this upon the interpretation methodology[15] applied by the CJEU.[16] Nevertheless, a legal literary debate has created regarding what can be acknowledged under the notion of either method,[17] and also whether any methodology is required at all, or rather there is a demand for defining specific direction points, interpretation criteria.[18] Because of this doctrinal importance it is justified to declare – similarly to the principle of the primacy of the application of EU law – the principle of primacy interpretation (or the primarty interpretation).[19]

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historical natural law.

14 The canon compiled by Savigny served as the methodological ground rules for the interpretation of law for a long period time, whereafter it was Rudolf von Jhering to also enrich the methodology of legal interpretation by creating the technique of legal interpretation for the congruity with the aim, since in his perception the interpretation of the given norm can be grasped by the judge's constantly focusing on the target proposed to be accomplished by it, and if he is dedicated to unfold the conrete meaning of the norm accordingly, in the case being exposed before him.

15 Lenaerts, Koen, Gutiérrez-Fons, José A. *To say what the law of the EU is: methods of interpretation and the European Court of Justice*. European University Institute Working Paper AEL /9. 2013. Available: http://hdl.handle.net/1814/28339

16 Bleckmann, Albert. Die Rolle der richterlichen Rechtschöpfung im Europäischen Gemeinschaftsrecht. In Lüke, Gerhard (ed.). *Rechtsvergleichung, Europarecht und Staatenintegration, Gedächtnisschrift für L.J. Constantinesco*, Köln: Carl Heymanns Verlag, 1983, pp. 201–202., Everling, Ulrich. Der Gerichtshof als Entscheidungsinstanz – Probleme der europäischen Rechtsprechung aus richterlicher Sicht. In Schwarze, Jürgen (ed.). *Der Europäische Gerichtshof als Verfassungsgericht und Rechtsschutzinstanz.* Baden-Baden: Nomos, 1983, pp. 143–144.

17 Kutscher, Hans. Thesen zu den Methoden der Auslegung des Gemeinschaftsrechts aus der Sicht eines Richters. In Gerichsthof der EK. Luxembourg: Begegnung von Justiz und Hochschule, 1976, Lasok, K.P.E, Lasok, Dominik. *Law and institutions of the European Union.* London: Butterworths, 2001, pp. 163–168.

18 Lenaerts, Koen. L'égalité de traitement en droit communautaire. un principe unique aux apparences multiples. *Cahiers de Droit Européen*, 1991, no. 1–2. pp. 3–41. especially 38.

19 This principle means that in cases where the EU law is involved, during the interpretation of the applied regulation the EU interpretation has a primary status to the national interpretation. The primacy of interpretation is closely related to the indirect effect (the doctrine of interpretation).

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Whichever of the above concepts shall be chosen, we can affirm that the activity of legal interpretation is the linking point where the majority of interactions can be detected inbetween the laws of the Member States and the European Union. Let us now familiarize with some examples to these interactions from the field of private law.

3 Interactions introduced in theses

3.1 The first thesis: interactions in the areas affected by the harmonisation of law

The law of the European Union is converged by the power of law. The CJEU plays a decisive role in the implementation of this.[20] The interpretation practice of the CJEU does have a significant influence over the judicial practice of the Member State,[21] in the light of Europisation even if it is not the primarity interpretation of the Union's law in our focus. The strongest effects of the EU law can be identified in the legal fields affected by the harmonisation of law. The harmonisation of law itself already implies the approximation of legal systems. Yet there are also other indirect consequences beyond the direct effects. Such an effect is for instance the implementation of the interpretation practice of the rules of the Union's law in terms of purely domestic established facts.

The accentuation of this as a principle doctrine was drawn by the Sziber-Judgment of the Court of 31 May 2018. case no. C-483/16.[22], when the Budapest High Court (Fővárosi Törvényszék) turned to the CJEU for a preliminary ruling, based on Article 267 to the Treaty on the Functioning of the European Union (TFEU). As per the brief established fact of the case, on 7 May 2008. Mr. Zsolt Sziber as debtor and Mrs. Mónika Szeder as joint debtor made and entered a contract with the ERSTE Bank, targeted for Purchasing Residential Property, which was kept registered in CHF yet with both the disbursement by the creditor and the settlement by the debtor(s) in HUF. The loan contract in question was registered at the CHF exchange rate applicable at that time, and a real-estate mortgage note was annexed to it.

The primary claim specified in Zsolt Sziber's complaint was that the court submitting the request shall make a judgement whereby it declares that the loan contract in question is invalid, furthermore that particular terms of the contract are unfair. During the time course of the lawsuit, Act XL of 2014. (hereinafter as: Act DH2) on its provisions as well as the rules of financial reconciliation decreed by Act XXXVIII of 2014. upon the resolution of certain issues relating to the decision of the Curia for the sake of legisative coherence referring to loan

20 Beck, Gunnar. *The Legal Reasoning of the Court of Justice of the EU*. Oxford: Hart Publishing, 2012. pp. 1–486.

21 See for more details: Tatham, Allan Francis. *EC Law in practice: A case-study approach.* Budapest: HVG-ORAC, 2006. pp. 148–216.

22 Judgement of the Court of 31 May 2018, Sziber, C-483/16. ECLI:EU:C:2018:367.

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contracts made and entered by the consumers to any financial institutions was passed. Based on § 37. to this Act, the court submitting the request ordered the plaintiff to adjust his complaint in a way that on the one hand he should specify the concrete type of a legal consequence that he demands to apply through the eventual decision to possibly declare the invalidity of the loan contract in question, and on the other hand to complete the financial reconciliation as in section (6) of § 38. to Act DH2. In spite of the court's order with the above content, the plaintiff had failed to submit any application regarding the equivalent adjustment to be made to his complaint.

The court submitting the question raised the question, whether the provisions of Act DH1 and DH2 are noncompliant with the Union's law, when they declare that on the one hand the two conditions included in the majority of the loan contracts registered in foreign currency, are adjudicated as unfair conditions. Namely the provision to define the exchange-rate margin and the provision of the one sided contract-modifying right, and furthermore that the financial institution is obliged to prepare a financial reconciliation report referring to the aforementioned conditions, and that on the other hand the consumer is obliged to specify the concrete type of a legal consequence he demands to apply through the eventually delivered decision declaring the partial or entire invalidity of the loan contract in question. Furthermore that he is obliged to express his demands in numerical value, with regards to any specific unfair terms and conditions in the given situation other than these two, whilst other loan-borrowers whose loan-contracts are not registered in foreign currency are not subject to the same obligations.

The CJEU has resolved the question relevant from the aspect of our topic by affirming that the interpretation of directive 93/13. must go according to that it shall also be applied in situations without any elements stretching across the borders.[23] This, however, is one unequivocal example to the impact of European law on purely domestic established facts.

3.2 The second thesis: the impact of the Member State's judicial practice upon the legal practice of the CJEU

Interaction can also be contained in a reverse relationship, when the CJEU adopts merits from the Member State's interpretation judicial practice as well.[24] In order to confirm this, let us take the example of a case, when the interpretation practice developed by the courts of the Member States happened to influence both the Union's lawmaker and the pursuit of the interpretation practice of the CJEU on the basis of the implementation of council directive 86/653/EEC

23 See the same effect in the Judgment of the Court of 15 November 2016, Ullens de Schooten, C-268/15, ECLI:EU:C:2016:874 paragraph 50–53.

24 Idot, Laurence. Deux précisions sur la directive relative aux agents commerciaux. *Europe. Actualité du Droit de l'Uunion Européenne.* 2006, vol. 16. no. 5. pp. 28–29.

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on the coordination of the laws of the Member States relating to self-employed commercial agents.[25] This directive has introduced a system of recompenses for the protection of commercial agent in particular, linked with the termination of the agency contract. In order to suffice the aims of this directive,[26] Article 17. offers a choice of alternative methods to the Member States to regulate the reinforcement of rights deriving from the termination of the agency contract. One of the alternatives is the financial reconciliation method with an indemnification approcah, as applied by French law[27], and the other one is the legal institution of compensation, as applied by German law[28]. The legal institution of compensation is rendered to serve as a restitution for the self-employed commercial agent in a situation when following the termination of his agency contract, thereby loses his rights to receive commission fees from the business, while the principal continues to acquire substantial benefits deriving unambiguously from the business activity of the agent having performed prior to the termination of his contract, still. The payment of an indemnity can be recognized as a replenishment to the remuneration system based on business commission fees, by which the value of the services performed can be equitably ensured. The execution of Article 17. to the directive was supervised by the European Commission. The report of the Commission of 23 July 1996.[29] on the execution of Article 17. to the directive supplies detailed information regarding the actual calculation of the indemnity. In the case of Honyvem Informazioni Commerciali Srl v Mariella De Zotti[30] before the CJEU, the CJEU cited both the report of the Commission, as well as its underlying base that is the German practice of law, intending to facilitate a more uniform interpretation of Article 17. With respect to paragraph (2) to Article 17. of the directive, the CJEU elaborated on that „The calculation scheme has been compiled generating from Article 89b to the German Commercial Code, which has prescribed the payment of the compensation since 1953, relating to the calculation of which a massive volume of case-law has created. This case-law conjoined with the practice shall together deliver inestimable assistance to the courts of the rest of the Member States for the interpretation of paragraph (2) to Article 17. of the directive".[31] With this particular technique, the CJEU has promoted and endorsed as a model to other Member States such principles developed on the grounds of one Member State's legal traditions and evolved legal practice, which lead to the realization of interactions between the laws of the Member States and the law of the Union, as regards of the matter of

25 Judgment of the Court of 9 November 2000, Ingmar, C-381/98. ECLI:EU:C:2000:605.
26 Judgment of the Court of 16 February 2017, Agro Foreign Trade, C-507/15 ECLI:EU:C:2017:129.
27 See Article 17. paragraph (3) of the 86/653/EEC directive.
28 See Article 17. paragraph (2) of the 86/653/EEC directive.
29 (COM(96) 364 final)
30 Judgment of the Court of 23 March 2006, De Zotti, C-465/04 ECLI:EU:C:2006:199 paragraph 35.
31 Judgment of the Court of 23 March 2006, De Zotti, C-465/04 ECLI:EU:C:2006:199.

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the legal institution of compensation in areas, where the harmonisation of law is not considered as a necessary asset to the accomplishment of goals proposed by a directive. The concept that this bears a clear effect on the legal practice of other Members States will be justified by our next thesis.

3.3 The third thesis: the application of comparative law methods in the relationship of Member State law and European law

Using the above directive, we can deduct a further piece of an example to the interactions. Council directive 86/653/EEC on the coordination of the legislation of Member States in the subject of self-employed commercial agents was originally adopted by Hungarian law via Act CXVII of 2000. on the contracts of independent commercial agents (later on, at the time of the new code to gain legal efficacy, it was the Act V. of 2013, the Civil Code). It is the legal institution of compensation known from German law what was incorporated in Hungarian law as a model for the regulation. A legal debate generated inbetween two legal persons, when after the termination of a contractual relationship between them, which was grounded upon the subject of commissioning an independent commercial agent, the principal failed to pay any compensation to the agent. During the litigational proceeding (Pfv.V.20923/2017/9.), the Hungarian tribunals had to determine the resolution to the question as to what are the procedural law conditions, under which if met, a due compensation may be paid off. The Curia, having adjudicated on the final level,[32] decided over the legal debate by settling certain questions of the legal insitution of compensation adopted by Hungarian law as it had been transmitted by European law on the basis of the German regulation model, through the evaluation of the legal practice of both the Bundesgerichtshof (The Federal Supreme Court of Germany) and the high courts of the provinces. To this, they used that judgement of the CJEU, which was approving the legal practice of the Member States entailed in the report of the Committee, marking certain questions that are not essentially governed by Union law. The specific question arose in connection to the burden of proof falling upon the party in demand for the compensation. The Curia utilized the legal practice of the Member State affecting its legal practice thorugh the European transmission. It applied a comparative legal method, and it arrived to the same conclusion with the standpoint of the Bundesgerichtshof in a question relating to a rule of substantive law (compensation) demonstrating a tradition of a decade in German law. In connection to the burden of proof, the Bundesgerichtshof expressed it in its decision[33] of 1969 first delivered in 1970 and referred thereafter, that „fundamentally, the burden of proof shall fall upon the plaintiff in terms of points 1–3 to paragraph (1) under 89. b of the Commercial Code".[34] This legal practice has not changed ever since. The Bundesgerichtshof for instance declared it in its

32 Judgment of Curia Pfv.V.20923/2017/9.

33 Judgment of the Bundesgerichtshof 2 VII ZR 47/69.

34 Judgment of the Bundesgerichtshof 2 VII ZR 47/69.

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decision of I ZR 229/15 delivered on 21 July 2016, that „fundamentally, the obligation to supply the fact as well as the proof, shall fall upon the plaintiff enforcing his demand for the compensation, as regards of the conditions of the demand and also that the calculation of the compensation is based solely on the types of commission fees bound by his activity as an agent".[35] A similar conclusion can be drawn fom the judgement of the Bundesgerichtsh No. VIII ZR 158/01 of 10 July 2002.[36] and No. VIII ZR 249/08 of 11 November 2009.[37]

These legal interpretations are pursued as the directives by the courts of the provinces. As an example to this, the Oberlandesgericht München explicitly refers the above specified legal practice in its judgment No. 23 U 4079/15 of 9 February 2017. as: „the obligation to supply the fact and the proof shall fall upon the plaintiff enforcing his demand for the compensation, as regards of the conditions of the demand"[38]

3.4 The fourth thesis: the doctrine of legal interpretation in congruity with the goals of the directive

This case could also make a good example to the co-operation of the laws of Europe and the Member States, from a different aspect. More precisely, the Curia had to interpret the decrees of Act CXVII of 2000. on the contracts of independent commercial agents in accordance with the Directive. The base for the compensation can be deducted directly from substantive rules of law of the Union, yet with respect to procedural rules for the enforcement of the claim – given the lack of the harmonisation of law in this area – the principle of the procedural autonomy[39] of the Member State shall prevail, which, complemeted by the principles of equivalence and effectiveness marks the procedural law framework for the enforcement of the claim.[40] In the concrete case, a decision also had to be made regarding if the ruling of the Directive[41] clearly only imposes the obligation on the party to enforce the compensation that he has to express his claim towards the principal within not more than one year from the date of the contract – termination, then does it cause to obstruct the right for the judicial enforcement of the claim that the Hungarian Act decrees a deadline of one year as a term of

35 Judgment of the Bundesgerichtshof of 21 July 2016 I ZR 229/15.

36 Judgment of the Bundesgerichtshof of 10 July 2002 VIII ZR 158/01.

37 Judgment the Oberlandesgericht München No. 23 U 4079/15 of 9 February 2017.

38 Judgment of the Bundesgerichtshof of 21 July 2016 I ZR 229/15 point 52.

39 See the deep analysis of the term 'procedural autonomy': Galetta, Diana-Urania: *Procedural Autonomy of EU Member States: Paradise Lost?* Berlin Heidelberg: Springer-Verlag, 2010, pp. 33–74.

40 See the critical points of this problem: Bobek, Michal: Why There is no Principle of 'Procedural Autonomy' of the Member States. In de Witte, Bruno, Micklitz Hans-W. (eds.). *The European Court of Justice and autonomy of the Memeber States.* Antwerpen: Intersentia, 2012, pp. 305–322.

41 Paragraph (5) in Article 17. of Council directive 86/653/EEC on the coordination of the legislation of Member States in the subject of self-employed commercial agents.

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preclusion. The Curia declared it in its provision that the procedural rule of the Member State may only be applied with an interpretetation in congruity with the Directive. As the plaintiff in fact sufficed the Directive, the decrees of the Member State imposing a stricter condition for the enforcement of the claim by nature, did not restrain the complaint from being adjudged in relevance.[42]

3.5 The fifth thesis: the impact of autonomous dogmas of the Union on the Member State's pursuit of the interpretation practice of law

In the course of the Member State's pursuit of judiciary practice, some situations occur when it is the law of the Union to provide a dogmatic base for a particular type of an interpretation practice inferring the development of law. This can well be demonstrated by an instance integral to one of the major legal fundamentals of Union law, namely the prohibition of any discrimination on grounds of sex. Commencing from the autonomous denotation of 'the employee of the Union', the Curia declared the principle of the prohibition of discrimination as setting the directive in the case of a commissioning type of a legal relationship similar in nature to this denotation, particularly when taking into account the base for the just remuneration of the former associate partner.

According to the brief established fact of the case, the contract, effectuated by and between the litigant parties entailed that the defendant, an attorney's office, having its official seat registered abroad, gave commission to the plaintiff, as an attorney to exercise her professional consultancy activity in collaboration with it, in return for remuneration. On 29 December 2003., the parties amended the collaboration agreement, and annexed to it that the plaintiff's status had transformed into that of an 'associated partner' in effect from 1 January 2004., resulting in that the defendant had become entitled to the additional payment of dividend on profit share over the monthly remuneration.

In 2006, the plaintiff reported to be expecting a child, whereby she did not exercise any professional activity as an attorney to the defendant beginning from the second quarter of 2006. However, the relationship did not disconnect between the parties, and the defendant was about to provide the plaintiff with the commission of an entitlement as office manager in 2008, yet the plaintiff was unable to undertake the opportunity, due to delivering her second child. In 2009, the plaintiff reported that after her period of absence due to giving birth to her children, she was prepared to return to fulfilling her commission under the effect of their legal relationship as associated partners. On 2 December 2009, the defendant's representative notified the plaintiff on that they do not intend to continue with their collaboration any longer, and that the plaintiff is not required to work for them any longer. The plaintiff requested that the defendant should pay off her remuneration along with her due profit share dividend in respect of the notice term.

42 Judgment of Curia Pfv.V.20923/2017/9.

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The Curia evaluated the defendant's practice concerning pregnant women as associated partners that they pursued with all of their associated female partners regardless of country and legal relationship, based on the testimonies of witnesses.[43] From this, it was concluded as a cause, that the plaintiff is entited to her profit points by having to take into account those that she had gained in the year she last spent at work preceeding the time of her pregnancy as the just remuneration and profit share dividend based on her legal relationship as an associated partner, for any other decision to conflict with this, would be a breaching of the principle of equal treatment.[44]

3.6. The sixth thesis: the principle of the obligation of interpretation

An unquestionable interaction can be explored inbetween the doctrines compiled by the CJEU, and the legal practices of the tribunals of the Member States. In other words: it is the judicial practice of a Member State, what shall transform those important doctrines compiled by the CJEU into „live-rights". To substantiate this, we can take some examples from the practice of a Member State on the obligation of interpretation, or as it is called otherwise the principle of indirect effectivity (indirect effect).[45]

According to the brief established fact of the case[46] a contract of timesharing[47] based on a timetable of a resort place targeted at the obtaining of right for the pursuit of use was effectuated by and between the litigant parties on 5 June 2010. A cost of 25.000 HUF for the establishment of the contract was determined by the parties. They stipulated, that since the salesperson may neither accept nor demand any payment by any legal title within 15 days from the day of signing the agreement, thus the plaintiff shall place the offset countervalue of the right for the pursuit of use of the resort place onto the trust account of the attorney. The plaintiff fulfilled his obligation accordingly.

The Curia has drawn the following affirmations in this legal debate. According to relevant Government Ordainment adopting European Directive[48] in the Hungarian legislation, the enterprise may neither accept nor demand any pay-

43 The Curia took into consideration the following decisions: Judgment of the Court of 11 October 2007. Paquay, C-460/06. ECLI:EU:C:2007:601; Judgment of the Court of 3 July 1986. Lawrie-Blum, 66/85. ECLI:EU:C:1986:284; Judgment of the Court of 23 March 2004. Collins, C-138/02, ECLI:EU:C:2004:172; Judgment of the Court of 11 November 2010. Danosa, C-232/09. ECLI:EU:C:2010:674.

44 Judgment of the Curia Pfv.V.21.851/2014/5.

45 Indirect effect is an interpretative tool by which individuals may use to rely on Directives against other individuals.

46 Judgment of the Curia Pfv.V.21.571/2014/6.

47 Papp, Tekla (Eds.) *Atipikus szerződések.(Atypical contracts)*, Budapest: Opten, 2015, pp. 15–74.

48 Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

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ment by any legal title from the consumer before the end of the entire term open for the withdrawal from the contract. The enterprise is obliged to return the payment the consumer, and also to pay off the amount of late interest upon that, calculated from the day of payment. This wording thus defines the special legal consequence of the matter of prohibition in congruity with the aim of the Directive.

The same conclusion reveals when examining the question on the basis of Union law. The Government Ordainment targeted to implement the Directive in Hungarian law, and Article 6. to the Directive decrees it as an unequivocal requirement for the Member States to establish provisions in their own legislations on the prohibition of deposits to be paid by a customer before the end of that particular term, during the entirety of which they could still exercise their right for withdrawal. The law of the member State can only be congruent with the aims of the Directive, if the interpretation of the law of the member State (Gov.Ordinance), conducted in the light of the Directive,[49] declares that such stipulations of contracts made before the force of this regulation, which shall prescribe an obligation for the consumer to put payments on attorneys' account, and this type of obligation is similar to the subject of the litigational case, are prohibited regardless of the fact that the Gov.Ordainment in fact does not include the prescription of prohibition in its text (von Colson principle).[50]

4 Summary: Europeanisation (Europisation) on the land of law

Nowadays we have been exposed to hearing more and more about the Europeanisation (Europisation) of various areas. As regards of its original content, this notion means a kind of an adaptational pressure. The notion of Europeanisation (Europisation) is used primarily by the science of politics[51], to describe the processes of multilevel governance. However, Europeanisation (Europisation) also prevails in the area of law,[52] through the mutual interactions of legal systems between one another, in the areas where the European elements shall appear in

49 Judgment of the Court of 10 April 1984.von Colson, 14/83. ECLI:EU:C:1984:153 paragraph 26.

50 See more details about the principle: Bleckmann, Albert: *Gleichbehandlung von Männern und Frauen hinsichtlich des Zugangs zur Beschäftigung.* Der Betrieb 1984, pp. 1574–1577.

51 See: Börzel, Tanja A. – Risse, Thomas: Conceptualizing the Domestic Impact of Europe. In Featherstone, Kevin. – Radaelli, Claudio M. (eds). *The Politics of Europeanization*, Oxford: Oxford University Press, 2003, pp. 57–80.; Caporaso, James A. – Jupille, Joseph: The Europeanization of Gender Equality Policy and Domestic Structural Change. In Caporaso, James A. – Cowles, Maria Green – RisseThomas (eds.). *Transforming Europe. Europeanization and Domestic Change*, Ithaca NY: Cornell University Press 2001, pp. 21–43.; Wessels, Wolfgang – Rometsch, Dietrich (eds.). *The European Union and Member States.* Manchester: Manchester University Press, 1996.

52 In my opinion, Europeanisation (Europisation) in the field of protection of rights promotes dialogue between the legislature and the courts too. See for more details: Young, Alison L *Democratic Dialogue and the Constitution*. Oxford: Oxford Scholarship Online 2017. pp. 1–336.

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the laws of the Member States, and in certain situations it goes the other way round, when the legal elements of the Member States shall appear in Union law. Beyond this, due to the occurrence of comparative law elements,[53] further interactions can evidently be observed on the horizontal level as well, in terms of the cross-infuential effects of the legal practices of the Member States on one another.[54] The process can also be studied in different functional areas of law, like on the level of law – establishment, the application of law and within this in the first place: in the matters of legal interpretation. Our fundamental assumption is that the majority of interactions can be recognized in the judicial interpretation pracice pursued on European level.

We saw – through concrete examples – the significance the comparative law methods, the doctrine of legal interpretation, the impact of autonomous dogmas and the principle of the obligation of interpretation. These examples contributed to lack of understanding of the complexity this question because the above-mentioned interactions are undeniably the driving force of living and working European law. The reason behind it is that in here, interaction are generating from the principle of mutual trust, as the derivatives of the chief governing principle of the judicial cooperation of the Union.

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53 See: Vogenauer, Stefan – Weatherill, Stephen (eds). *General Principles of Law. European and Comparative Perspectives*. Oxford: Hart, 2017, pp. 1–432.

54 Murray, John L.*Methods of Interpretation – Comparative Law Method*. Actes du colloque pour le cinquantième anniversaire des traités de Rome: l'influence du droit national et de la jurisprudence des juridictions des états membres sur l'interpretation du droit communautaire 1957–2007 Luxembourg: Office des publications officielles des Communautés européennes, 2007, pp. 39–47.

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